IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

APPEAL NO.644 OF 1998
IN
NOTICE OF MOTION NO.2168 OF 1995
IN
SUIT NO.3152 OF 1995

Control Print (India) Limited,
a company incorporated under the
provisions of Companies Act I of
1956, having its office at C-106,
Hind Saurashtra Industrial Estate,
Andheri-Kurla Road, Marol Naka, ..Appellant.
Bombay 400 059. (Orig. Plaintiff)

Vs.

1. Cab Machines S. A.
   a company incorporated in
   Switzerland, having its office
   at Y-Parc, Chemin de la Sallaz
   CH-1400, Yverdon-Les-Bains,
   Switzerland, and Bombay office
   address at 301, “Sargam”, Plot
   No.4, Sector 1, Charkop,
   Kandivli (West), Bombay 400 067.

2. V. Adamovich,
   Director of Defendant No.1 abovenamed,
   having his office at
   Y-Parc, Chemin de la Sallaz
   CH-1400, Yverdon-Les-Bains,
   Switzerland, and Bombay office
   address at 301, “Sargam”, Plot
   No.4, Sector 1, Charkop, .. Respondent Nos.1 and
2

Kandivli (West), Bombay 400 067. (Orig. Defendants 1 and 2)

3. Gujarat Telephone Cables Ltd.,
   a company registered under the
   Companies Act, 1956 having its
   office at P.O. Chharodi Farm,
   Dist. Ahemedabad 382 170.

4. M/s. Gujarat Optial Communications Ltd.,
   a company registered under the
   Companies Act, 1956 having its
   office at 507, Hare Krishna Complex,
   Pritamnagar, Ahemedabad 380 005.

5. M/s. GTCL Mobile Com Technology Ltd.,
   a company registered under the
   Companies Act, 1956 having its office
   at P.O. Chharodi Farm, Tal. Sanand,
   Dist. Ahemedabad 382 170.

6. M/s. Ram Telecom Ltd.,

7. M/s. Venkateshwara Telecom Ltd.,
   both companies registered under
   the Companies Act, 1956 having
   their office at 6-1-103/113/E
   Sri Sai Apartments, Opp Hanuman
   Temple, Abhinav Colony, Padmarao
   Nagar, Secunderabad 500 025.

8. M/s. Aksh India Ltd.,

9. M/s. CMI Ltd.,
   both companies registered under
   the Companies Act, 1956 having
   their office at 602, Ansal Bhawan,
   Kasturba Gandhi Marg,
   New Delhi 110 001.

10. M/s. Paramount Communications Ltd.,
a company registered under the
Companies Act, 1956 having
their office at M-4, Bahubali
59/17, New Rohtak Road, ..Respondents
New Delhi 110.005. (Orig. Respondents 1 to 8)

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Shri D.S. Parikh with Shri Parimal K. Shroff with Shri Subodh Joshi with Ms. Prachi Khandge with Ms. Radhika Kapadia i/b M/s. P.K. Shroff & Co. for the Appellant.
None for the Respondents.

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CORAM: **R. M. S. KHANDEPARKAR, &**
DR. D.Y. CHANDRACHUD, JJ.

25th January, 2007.

ORAL JUDGMENT (Per.R.M.S. KHANDEPARKAR, J.) :

1. Heard advocate for the Appellant. None present for the Respondents though served.

2. The present Appeal arises from the order dated 24th June, 1997 passed in Notice of Motion 2168 of 1995 in Suit 3152 of

1995. By the interim order the Learned Single Judge has allowed the Appellant to withdraw a sum of Rs.8,56,000/- out of the total amount of Rs.30 lacs for which the bank guarantee was directed to be furnished by the Respondents under order dated 4th September, 1995 in Notice of Motion 2168 of 1995 and was accordingly furnished by the Respondents on 5th September, 1995.

3. The impugned order is sought to be challenged on the ground that the materials placed on record clearly warranted an order in favour of the Appellant for withdrawal of the entire amount of Rs.30 lacs and in that regard the Learned Single Judge has failed to deal with the issue pertaining to the entitlement of the Appellant to withdraw the said amount on the basis of the material placed on record.

4. The records apparently disclose that the Appellant has filed a suit for declaration that the agency agreement entered into between the parties is valid and subsisting and binding on the parties and inspite of the same, the Respondents have purportedly

sought to terminate the same by a message dated 28th March, 1995 which according to the Appellant is illegal and arbitrary and consequently the Appellants are entitled to claim damages in the sum of Rs.7,24,00,000/-, out of which an amount of Rs.24,30,000/- is towards the commission of sales already effected and orders already procured till 28th March, 1995 and a sum of Rs.87,70,000/- towards commission which will be payable to the Appellant on enquiries / proposals generated, followed up, technical discussion held and orders under finalization. The Learned Single Judge in Notice of Motion 2168 of 1995 which was taken out raising preliminary objection as regards the absence of jurisdiction to entertain the suit and pertaining to the non-maintainability of the suit on the ground of the absence of concluded contract between the parties, held that the Court has jurisdiction to entertain the suit and that there is a concluded contract between the parties which was sought to be terminated without issuing three months notice which was required to be issued in terms of clause 6 of the agreement between the parties.

5. As rightly submitted by the learned advocate for the Appellant, the impugned order deals with only two issues, one regarding the jurisdiction to entertain the suit and other whether there has been a cause of action to file the suit. While dealing with the aspect of the objection raised by the Respondent regarding absence of concluded contract between the parties and further regarding failure on the part of the Respondent to issue three months notice in terms of clause 6 of the agreement, the impugned judgment nowhere deals with the materials placed on the record to ascertain prima facie whether the Appellant would be entitled to encash the bank guarantee to the tune of Rs.30 lacs and withdrawal of the said amount during the pendency of the suit. The impugned order merely refers to the fact that the bank guarantee was furnished by the Respondent in terms of the orders passed by this Court and further that the Appellant is granted liberty to withdraw a sum of Rs.8,56,000/- against the said bank guarantee.

6. The Notice of Motion taken out by the Appellant clearly discloses a relief for payment to the Appellant the commission on

invoice value of all equipments sold by the Respondent - Defendant No.1 in terms of clause 2 of the agreement between the parties. However, the impugned order nowhere deals with this aspect of the matter and on that count itself it would be necessary to remand the matter to the Learned Single Judge to deal with the said aspect after taking into consideration all the materials placed on the record and to ascertain prima facie about the claim of the Plaintiff- Appellant for encashment of the bank guarantee in the amount of Rs.30 lacs and for withdrawal of the amount of Rs.30 lacs during the pendency of the suit. Since the impugned order nowhere discloses any discussion on this aspect nor any finding in that regard, it would be just and appropriate to give an opportunity to the parties to get the said point adjudicated before the Learned Single Judge at the original stage of the proceedings and for that purpose to remand the matter to the Learned Single Judge. We make it clear that we have not interfered with any of the findings arrived at by the Learned Single Judge in the impugned order regarding the jurisdiction of the Court to entertain the suit as well as finding regarding existence of the concluded contract and

failure on the part of the Respondent to issue notice of termination in terms of clause 6 of the contract between the parties. In the result therefore without interfering in the findings arrived at, only on account of failure on the part of the Learned Single Judge to deal with the aspect regarding the entitlement of the Appellant - Plaintiff to claim encashment / withdrawal of the amount of Rs.30 lacs during the pendency of the suit, to get the said point adjudicated at the interim stage during the pendency of the suit, the matter is remanded to the Learned Single Judge. It is needless to say that the parties are at liberty to move the Learned Single Judge for expeditious disposal of the Notice of Motion in view of the fact that the same relates to the year 1995. The Appeal is accordingly disposed of in above terms with no order as to costs.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)